

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SYDNEY BRADSHAW,	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-CV-5221
IMMIGRATION & NATURALIZATION	:	
SERVICE, et al.,	:	
Respondents.	:	

MEMORANDUM

GREEN, S.J.

May _____, 2002

Presently before the Court is Sydney Bradshaw's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 and Respondents' Response thereto. For the following reasons, Petitioner's habeas corpus petition will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Sydney Bradshaw is a citizen of British Guyana. He entered the United States in December, 1964. On February 9, 1998, Petitioner was convicted of aggravated assault in Burlington, Vermont and was sentenced to 8 months to 4 years imprisonment; Petitioner served 8 months and the remainder of the sentence was suspended while Petitioner was on probation. As a result, the Immigration and Naturalization Service ("INS") charged Petitioner with being removable as an aggravated felon under 8 U.S.C. § 1227(a)(2)(A)(iii) and 1101(43)(F) and instituted removal proceedings. The INS entered a final order of removal against Petitioner in August, 1999.

In April, 2001, while incarcerated in York County Prison, in York, Pennsylvania, Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2241 in the United States District Court for the Middle District of Pennsylvania which challenged the final order of

removal on various grounds; one allegation was a collateral attack on his criminal conviction in Vermont.¹ Thereafter, Petitioner was transferred to Berks County Prison in Leesport, Pennsylvania, which is located within the confines of the Eastern District of Pennsylvania. In October, 2001, Petitioner filed another habeas corpus petition pursuant to 28 U.S.C. § 2241 in the United States District Court for the Eastern District of Pennsylvania.

In November, 2001, Respondents moved to dismiss Petitioner's habeas corpus petition in the Eastern District of Pennsylvania on the grounds that Petitioner had a substantially similar habeas corpus petition pending in the Middle District of Pennsylvania that had not been disposed of by the court. In response, Petitioner filed two Motions for Default Judgment and the Immediate Declaratory Order to the Service to Release the Petitioner. However, prior to this Court issuing a judgment on the previous motions, the district court in the Middle District of Pennsylvania transferred the above-captioned case to this District pursuant to 28 U.S.C. § 1406(a).² By Order dated January 25, 2002, this Court denied Petitioner's two motions for default judgment, dismissed Respondents' Motion to Dismiss as moot, and ordered Respondents to substantively respond to Petitioner's habeas corpus petition.

II. LEGAL STANDARD

Pursuant to 28 U.S.C. § 2241, this Court retains subject matter jurisdiction over petitions for writ of habeas corpus filed by aliens subject to deportation. See Liang v. INS, 206 F.3d 308,

¹An evidentiary hearing on Petitioner's claim for post conviction relief based on ineffective assistance of counsel was scheduled for April 18, 2002. It has since been postponed. (See Petitioner's Response to Judge's Order of March 19, 2002.)

²The district court noted in its November 20, 2001 Order that Petitioner was transferred to the Montgomery County Correctional Facility since the initiation of Petitioner's action. This facility is also within the confines of the Eastern District of Pennsylvania.

317 (3d Cir. 2000), *cert. denied*, 533 U.S. 949 (2001). District courts retain subject matter jurisdiction over habeas petitions despite the passage of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214 (enacted and effective April 24, 1996) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 3009-546 (enacted on September 30, 1996 and effective on April 1, 1997). See INS v. St. Cyr, 533 U.S. 289, 314 (2001). Habeas review is limited to questions of statutory and constitutional law; review of purely factual or discretionary issues is prohibited. See Sol v. INS, 274 F.3d 648, 651 (2d Cir. 2001); Goncalves v. Reno, 144 F.3d 110, 125 (1st Cir. 1998).

III. DISCUSSION

Petitioner relies on the Supreme Court decision in Zadvydas v. Davis, 533 U.S. 678 (2001), to challenge the legality of his detention. In Zadvydas, the Supreme Court examined Section 1231(a) of Title 8, which governs detention during and after removal proceedings. Section 1231(a)(2) provides that after the government finds an alien to be unlawfully present in the United States and after it enters a final order of removal, the Government normally holds that alien in custody during a subsequent 90-day statutory “removal period.” See id. at 682. Section 1231(a)(6), or the “post-removal-period” detention statute, provides that if an alien is not removed during the statutory 90-day period, the Government may either detain the alien beyond that period or release the alien under supervision. See id. at 683. Section 1231(a)(6) states in relevant part:

An alien ordered removed who is inadmissible under section 212 [8 USCS § 1182], removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) [8 USCS § 1227(a)(1)(C), (a)(2), or (a)(4)] or who has been determined by the Attorney General to be a risk to the

community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. §1231(a)(6).

In determining whether the post-removal-period detention statute authorizes the Attorney General to detain a removable alien indefinitely beyond the removal period or only for a period reasonably necessary to secure the alien's removal, the Supreme Court in Zadvydas held that the statute contains an "implicit 'reasonable time' limitation, the application of which is subject to federal court review." Id. at 682. The "reasonableness" of the time limitation turns on "whether the detention in question exceeds a period reasonably necessary to secure removal." Id. at 699. Determining six months to be a "presumptively reasonable period of detention," the Court stated that after a six-month period in custody, a detained alien can provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Id. at 701. Thereafter, "the Government must respond with evidence sufficient to rebut that showing." Id. If removal is not reasonably foreseeable, the continued detention of the alien is unreasonable. See id. at 699-700.

Petitioner, who has been in INS custody for a period greater than six months, argues that his continued detention is unconstitutional and that he must be released pursuant to the Supreme Court's reasoning in Zadvydas. Upon review, however, Petitioner has presented no evidence that removal in the foreseeable future is unlikely. As stated by Respondents, the primary reason for the delay in removing Petitioner rests upon the unwillingness of the foreign consulate to issue the travel documents necessary to effectuate Petitioner's removal due to the pending litigation, namely, the litigation of the instant habeas petition. Therefore, because Petitioner provides no

good reason as to why his removal in the reasonably foreseeable future would be unlikely following the disposition of the instant petition, Petitioner's continued detention is reasonable. Accordingly, I will deny Petitioner's habeas corpus petition. Since Petitioner is an aggravated felon under 8 U.S.C. § 1227(a)(2)(A)(iii) and 1101(43)(F) and therefore inadmissible under 8 U.S.C. §1231(a)(6), it is within the discretion of the Attorney General to either detain Petitioner or release him under supervision until he is removed.³

An appropriate order follows.⁴

³The INS will conduct a review of Petitioner's custody status no later than June 19, 2002. (See Respondents' Mot. to Dismiss at 6; Ex. A.)

⁴The Court notes that Petitioner filed a habeas action in the United States District Court for the Middle District of Pennsylvania, which by Order dated November 20, 2001 was transferred to this District under Civil Action No. 01-CV-5953, which by Order dated January 25, 2002, is considered under Civil Action No. 01-CV-5221. Although the petition filed in the Middle District is substantially similar to the instant petition, Petitioner makes several additional arguments that the Court will address. Petitioner argues that his petition for a writ of habeas corpus should be granted because: (1) he has derived United States citizenship under the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000); (2) the Immigration and Nationality Act, as amended by the AEDPA and IIRIRA, do not apply to him; (3) the final order of removal is invalid because neither the Burlington, Vermont police nor the INS advised him of his consular rights under the Vienna Convention; and (4) he is entitled to cancellation of removal or some other form of discretionary relief.

Having carefully reviewed Petitioner's arguments, I conclude that they are without merit. Accordingly, the order entered in the consolidated matter is applicable to the aforesaid grounds for relief.

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SERVICE, et al.,	:	
Respondents.	:	

ORDER

AND NOW, this _____ day of May, 2002, upon consideration of the petition for writ of habeas corpus and the response thereto, **IT IS HEREBY ORDERED** that Petitioner's Petition for Writ of Habeas Corpus is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.